

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FILED  
U.S. DISTRICT COURT  
NOV 28 2003

UNITED STATES OF AMERICA

Plaintiff,

v.

COLONIAL PIPELINE COMPANY,  
INC.

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

CIVIL ACTION NO.

1:00-CV-3142

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to the Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq., as amended by the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2701, et seq., seeking injunctive relief and civil penalties against Colonial Pipeline Company ("Defendant" or "Colonial") for the discharge of oil into navigable waters of the United States and adjoining shorelines.

JURISDICTION, AUTHORITY AND VENUE

2. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1345, 1355, and Section 311(b)(7)(E) of the CWA, 33 U.S.C. § 1321(b)(7)(E).

3. Authority to bring this action is vested in the United States Department of Justice by Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1395(a), and Section 311(b)(7)(E) of the CWA, 33 U.S.C. § 1321(b)(7)(E), because defendant is located, resides or is doing business, and is found in this District.

5. Notice of the commencement of this action is being given to the States of Alabama, Georgia, Louisiana, Maryland, New Jersey, North Carolina, South Carolina, Tennessee, Texas, and Virginia pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

#### DEFENDANT

6. Defendant Colonial Pipeline Company ("Colonial") is a corporation organized and existing under the laws of the State of Delaware and licensed to do business in the State of Georgia.

#### STATUTORY BACKGROUND

##### Prohibition of Oil Discharges

7. Section 301(a) of the CWA, 33 U.S.C. 1311(a), prohibits the discharge of any pollutant, including oil, by any person, except as authorized by and in compliance with other sections of the CWA.

8. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source." Oil is a "pollutant" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

9. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States and adjoining shorelines in such quantities as the President determines may be harmful to the public health or welfare or the environment of the United States.

10. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA, acting through its delegated authority under Executive Order No. 11735, 38 Fed. Reg. 21243 (Aug. 7, 1973), has determined by regulation that the quantities of oil that may be harmful to the public health or welfare or the environment of the United States are discharges of oil that violate applicable water quality standards, or cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines. 40 C.F.R. § 110.3.

#### Injunctive Relief

11. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the Administrator of EPA to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under Section 309(a).

12. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator of EPA to, inter alia, issue compliance orders for discharges of pollutants prohibited under Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

13. Pursuant to Section 311(e) of the CWA, 33 U.S.C. § 1321(e), whenever the President determines that there may be an imminent and substantial threat to the public health or welfare of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitat, and other living and non-living natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil or a hazardous substance from a vessel or facility in violation of subsection (b) of this section, the President may require the Attorney General to secure any relief from any person, including the owner or operator of the vessel or facility, as may be

necessary to abate such endangerment.

14. By Executive Order No. 12777, signed on October 18, 1991, the President delegated the authority to make such findings of imminent and substantial endangerment under Section 311(e) of the CWA, 33 U.S.C. § 1321(e), to the United States Environmental Protection Agency.

#### Civil Penalties

15. Section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7), as amended by OPA, provides that:

Any person who is the owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of . . . [Section 311 (b)(3) of the CWA], shall be subject to a civil penalty in an amount up to \$25,000 per day of violation or in an amount up to \$1,000 per barrel of oil or unit of reportable quantity of hazardous substances discharged. [Bracketed material supplied] <sup>1/</sup>

16. Section 311(b)(7)(D) of the CWA, 33 U.S.C. § 1321(b)(7)(D), as amended by OPA, provides that:

In any case in which a violation of [Section 311(b)](3) was the result of gross negligence or wilful misconduct of a person described in [Section 311(b)(7)](A), the person shall be subject to a civil penalty of not less than \$100,000, and not more than \$3,000 per barrel of oil or unit of reportable quantity of hazardous substance discharged. [Bracketed

---

<sup>1/</sup> The statutory penalty amounts are periodically amended for inflation as mandated by the Debt Collection Improvement Act of 1996. Currently, the maximum per barrel civil penalty for oil spills under this provision is \$1,100. The alternative per day of violation maximum has been increased to \$27,500. 40 C.F.R. 19.4 (July 1, 1999).

material supplied]<sup>2/</sup>

### GENERAL ALLEGATIONS

17. Defendant operates an underground pipeline that consists of more than 5300 miles of pipe extending from Texas to the New York Harbor and traversing a number of States in between, including Louisiana, Mississippi, Alabama, Georgia, Tennessee, South Carolina, North Carolina, Virginia, Maryland, Delaware, Pennsylvania and New Jersey.

18. Defendant's headquarters are located in Atlanta, Georgia .

19. During the period from 1968 through 1996, Defendant reported approximately 194 spills to the United States Department of Transportation's Office of Pipeline Safety, including a number of high volume spills. Among the identified causes for the spills reported to the Office of Pipeline Safety are corrosion, mechanical damage (sometimes referred to as "third party damage"), and operator error.

20. On June 26, 1996, a segment of the pipeline that runs through Simpsonville, South Carolina ruptured, resulting in the unpermitted discharge of approximately 22,800 barrels (957,600 gallons) of diesel fuel into the Reedy River. The immediate causes of this rupture were corrosion of the pipe and operator error. The spill contaminated the river with floating oil for approximately 23 miles, and aqueous phase oil was detected multiple times over a 34 mile length of the river. An estimated 35,000 fish were killed, and various species of other wildlife were oiled and killed. Aquatic invertebrates, which are prey for both fish and wildlife, were contaminated with oil and their populations

---

<sup>2/</sup> Currently, the maximum civil penalty for oil spills under this provision is \$3,300 per barrel. 40 C.F.R. 19.4 (July 1, 1999).

reduced. Groundwater near the river was contaminated with oil and remained contaminated more than three years after the spill.

21. On or about April 23, 1996, a rupture in a segment of Colonial's pipeline resulted in the unpermitted discharge of approximately 33 barrels (1386 gallons) of gasoline into an unnamed creek and adjoining shoreline near Blacksburg, South Carolina. The cause of the spill was a crack located at two overlapping dents on the pipe.

22. On or about May 17, 1996, a rupture in a segment of Colonial's pipeline resulted in an unpermitted discharge of approximately 1.2 barrels (50 gallons) of gasoline into an unnamed creek and adjoining shoreline in Greensboro, North Carolina. The cause of the spill was a dent or dents in the pipe. During excavation, Colonial found debris such as logs and roots in the vicinity of the failed pipe.

23. On or about May 30, 1997, a release from riser stacks on a segment of Colonial's pipeline resulted in the unpermitted discharge of approximately 450 barrels (18,900 gallons) of gasoline to an unnamed stream and adjoining shorelines near Athens, Georgia. The cause of the spill was human error during a nitrogen displacement procedure. The spill contaminated soils, groundwater, and surface waters, including the unnamed stream that flows into Bear Creek, which in turn flows into the Middle Oconee River. As of September 1999, a plume of contamination in the groundwater covered about 5 acres.

24. On or about December 2, 1997, Colonial discovered a leak in a segment of its pipeline that has resulted in the unpermitted discharge of more than 10,000 barrels (420,000 gallons) of gasoline in St Helena Parish, Louisiana. This discharge has caused extensive soil and groundwater contamination and has reached Darling Creek. The cause of the leak was corrosion in the pipe. As

of September 1999, a plume of gasoline, including leaded gasoline, extended over approximately 14 acres on the surface of the groundwater which flows towards Darling Creek, and more than 60 acres had been contaminated by the discharge.

25. On or about February 9 and 10, 1999, a rupture in a segment of Colonial's pipeline resulted in the unpermitted discharge of approximately 1275 barrels (53,550 gallons) of fuel oil into Goose Creek and the Tennessee River and adjoining shorelines in Knoxville, Tennessee. The spill was exacerbated by Colonial's operation of the pipeline even after there were indications of problems on the system. The spill resulted in the closure of approximately 10 miles of the river and killed a number of fish.

26. On or about May 19, 2000, a spill from Colonial's pipeline system resulted in the unpermitted discharge of kerosene and a sheen about 40 feet by 40 feet in a pond that flows into a tributary of the East Fork Deep River in Greensboro, North Carolina.

27. Over the past five years, there have been numerous additional spills of oil into the environment from the Colonial's pipeline system which, upon information and belief, may not have reached "waters of the United States" within the meaning of the CWA, including but not limited to the following:

a. *Nashville, Tennessee (12/1/99)*: On or about December 1, 1999, a leak from the pipeline was detected where petroleum had surfaced on the grounds of a business in Nashville, Tennessee. The cause of the spill was reported to be corrosion in the pipe.

b. *Atlanta Junction, Georgia (4/21/99)*: On or about April 21, 1999, approximately 11,800 gallons of gasoline were released when a tank was overfilled at Colonial's Atlanta Junction

facility in Cobb County, Georgia, due to human error.

c. *Dunwoody, Georgia (3/30/98)*: On or about March 30, 1998, approximately 38,700 gallons of gasoline were released from Colonial's 40-inch pipeline at Dunwoody, Georgia.

The spill resulted from a pipe buckle with a crack in a section of the pipeline that runs beneath the Morgan Falls landfill.

d. *Cloverleaf, Texas (2/23/98)*: On or about February 23, 1998, Colonial was notified by a third party of a leak from Colonial's 36-inch pipeline at Interstate Highway 10 at Beltway 8, on the east side of Houston, Texas. Colonial estimated that approximately 9,000 gallons of fuel oil were released. The spill resulted from a corrosion pit in the pipeline.

e. *Murfreesboro, Tennessee (11/05/96)*: On or about November 5, 1996, Colonial's 8-inch pipeline near Murfreesboro, Tennessee ruptured, spilling approximately 84,700 gallons of diesel fuel, with most of this fuel flowing through a sinkhole into the subsurface water system.

This failure occurred as a result of human/operator error and inaccuracies in the equipment displays that the controller was using to operate the pipeline system.

28. Historically, over the course of approximately the last twenty years, there have been numerous additional spills from Colonial's pipeline system which did reach waters of the United States, including but not limited to the following:

a. *North Baltimore Line No. 36 (7/20/93)*: On or about July 20, 1993, Colonial was notified by a third party of the presence of a gasoline odor and a sheen on a tributary of Long Green Creek near Hydes, Maryland. Colonial found small bubbles of gasoline leaking into the creek and found the 8-inch pipeline to be exposed within the creek. The spill



resulted from a small crack in a gouge that Colonial reported appeared to be the result of third party mechanical damage.

- b. *Fountain Inn, South Carolina (12/19/91)*: On or about December 19, 1991, Colonial's 36-inch pipeline in Greenville County, South Carolina, ruptured and spilled more than 500,000 gallons of fuel oil, which flowed into Durbin Creek, and polluted approximately 26 miles of waters, including the Enoree River, which flows through Sumter National Forest. This spill was caused by previous mechanical damage.
- c. *Powder Springs, Georgia (9/21/90)*: On or about September 21, 1990, a segment of Colonial's pipeline in Powder Springs, Georgia, failed and discharged oil into an unnamed stream. This spill was caused by corrosion.
- d. *Chesterfield, Virginia (6/22/90)*: On or about June 22, 1990, a rupture in a segment of Colonial's pipeline released approximately 84,000 gallons of fuel oil to a pond near Chesterfield, Virginia. The cause of the spill was mechanical damage in a portion of the pipe that was under water.
- e. *Grundy & Marion Counties Line, Tennessee (5/20/90)*: On or about May 20, 1990, Colonial's 10-inch pipeline near the border between Grundy and Marion Counties, Tennessee, spilled approximately 5,600 gallons of gasoline into Clifty Creek and the Little Sequachie River. Colonial reported that this mechanical damage failure occurred when a dozer hit the pipeline while grading and lowering a road.
- f. *Woodbury, New Jersey (1/05/88)*: On or about January 5, 1988, Colonial's 30-inch pipeline in Deptford Township, New Jersey failed and spilled approximately 100,000

- gallons of fuel oil, with the oil migrating overland to the surface waters of Woodbury Creek, about eight hundred (800) feet to the north. The main cause of this rupture was corrosion.
- g. *Richmond, Virginia (11/8/85)*: On or about November 8, 1985, Colonial's 16-inch pipeline in Chesterfield County, Virginia failed and released approximately 120,800 gallons of fuel oil, with most of the oil going in the James River. Colonial reported the failure occurred in an area where the pipe had been previously scraped and dented.
- h. *Shelby County, Alabama (4/5/85)*: On or about April 5, 1985, approximately 168,000 gallons of gasoline were released from a segment of the pipeline in Shelby County, Alabama. Some of the gasoline entered Clear Prong and Yellow Leaf Creek, contiguous to the Coosa River, killing fish and causing other environmental damage. The cause of the spill was corrosion.
- i. *Manassas and Locust Grove, Virginia (3/06/80)*: On or about March 6, 1980, Colonial's 32-inch pipeline ruptured in two locations. The first rupture occurred near Manassas, Virginia and released approximately 336,000 gallons of aviation-grade kerosene, which flowed into Bull Run River and entered the Occoquan Reservoir, a source of drinking water for several communities. The second rupture occurred near Locust Grove, Virginia and released approximately 92,000 gallons of fuel oil that flowed into the Rapidan and Rappahannock Rivers, a source of drinking water for the city of Fredericksburg. The first spill occurred in a section of corroded pipe and the second in pipe with a crack.
- j. *Winder Leak Site (Barrow County, Georgia)*: In 1976, Colonial discovered a leak caused by corrosion on its 36" pipeline. Some contaminated soil was excavated and

removed at that time. In 1994, Colonial discovered that the coating on the pipeline was dissolving as a result of residual gasoline contamination. Subsequent investigation identified a plume of contamination in the groundwater measuring about 700 feet by 400 feet that flows toward two small streams where water quality standards have been exceeded.

29. The types of gasolines and fuels transported by Colonial are among the most toxic of all oil products to aquatic life and other wildlife. Small concentrations of these oils in water can cause death to aquatic organisms including fish or impair their growth. Minute quantities of oil can cause reproductive impairment in wildlife. Drinking water uses may be impaired by spilled oil from contamination or restrictions in use. Oil spills into water can further harm the public by affecting recreational uses of the aquatic system. Aquatic systems may require years to recover from the environmental harm caused by large oil spills. Because of the extensive geographic coverage of Colonial's pipeline system, the volume of oil products transported, and the proximity of the pipeline to thousands of aquatic habitats, a diversity of aquatic systems are at risk from Colonial pipeline spills.

30. The Reedy River, the unnamed creek near Blacksburg, South Carolina, the unnamed creek in Greensboro, North Carolina, the unnamed stream and Bear Creek near Athens, Georgia, Darling Creek, Goose Creek and the Tennessee River, and the pond at Colonial's Greensboro, North Carolina facility are all "navigable waters of the United States," within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

31. Colonial is an "owner or operator" of an "on-shore facility" within the meaning of Section 311(a)(6) and (10), of the CWA, 33 U.S.C. § 1321(a)(6) and (10), and is a "person" within the meaning of Sections 301(a), 311(a)(7), and 502(5) of the CWA, 33 U.S.C. §§ 1311(a),

1321(a)(7), and 1362(5).

32. The pipeline operated by defendant is a "point source" within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14), and an "onshore facility" within the meaning of CWA Section 311(a)(10), 33 U.S.C. § 1321(a)(10).

33. Defendant has "discharged" oil within the meaning of CWA Sections 311(a)(2), 33 U.S.C. § 1321(a)(2), and Section 502(16), 33 U.S.C. § 1362(16), in such quantities as may be harmful as determined by the President.

34. Defendant has discharged oil in violation of Section 301(a), 33 U.S.C. § 1311(a).

35. Diesel fuel, gasoline, and the other petroleum products transported by Colonial are "oil" within the meaning of CWA Section 311(a)(1), 33 U.S.C. § 1321(a)(1), and "pollutants" within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6).

36. The quantity of oil and gasoline discharged by Colonial in each of the spills described in Paragraphs 20 through 26 above was sufficient to and did cause a sheen or discoloration of the receiving waters and/or violated applicable water quality standards.

#### FIRST CLAIM FOR RELIEF

#### PENALTIES UNDER SECTION 311(b) OF THE CWA

37. Paragraphs 1 through 26 and 29 through 36 are realleged and incorporated herein by reference.

38. Defendant's discharges of oil and gasoline as described in Paragraphs 20-26 violated Section 311(b)(3) of the CWA, 33 U.S.C. 1321(b)(3). For those discharges occurring before January 30, 1997, Defendant is liable for a civil penalty of up to \$25,000 per day of violation or an amount up

to \$1,000 per barrel discharged, pursuant to Section 311(b)(7)(A) of the CWA, 33 U.S.C. § 1321(b)(7)(A). Pursuant to Section 311(7)(D), 33 U.S.C. § 1321(7)(D), to the extent that the discharge or violation was the result of gross negligence or wilful misconduct, Defendant is liable for a civil penalty of not less than \$100,000 and not more than \$3,000 per barrel discharged. For those discharges occurring after January 30, 1997, Defendant is liable for a civil penalty of up to \$27,500 per day of violation or an amount up to \$1,100 per barrel discharged, pursuant to Section 311(b)(7)(A) of the CWA, 33 U.S.C. § 1321(b)(7)(A), and pursuant to Section 311(7)(D), 33 U.S.C. § 1321(7)(D), to the extent that the discharge or violation was the result of gross negligence or wilful misconduct, Defendant is liable for a civil penalty of not less than \$110,000 and not more than \$3,300 per barrel discharged.

#### SECOND CLAIM FOR RELIEF

##### INJUNCTIVE RELIEF UNDER SECTION 301 AND 309 OF THE CWA

39. Paragraphs 1 through 36 are realleged and incorporated herein by reference.
40. Defendant's discharges of oil and gasoline described in Paragraphs 20-26 and 28 violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Defendant is subject to injunctive relief pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), directing defendant to undertake appropriate action to achieve compliance with the CWA.

#### THIRD CLAIM FOR RELIEF

##### INJUNCTIVE RELIEF UNDER SECTION 311(e) OF THE CWA

41. Paragraphs 1 through 38 are realleged and incorporated herein by reference.
42. EPA has determined that because of actual and threatened discharges of oil from

defendant's pipeline, in violation of Section 311(b) of the CWA, 33 U.S.C. § 1321(b), there may be an imminent and substantial endangerment to the public health or welfare, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitat, and other living and non-living natural resources under the jurisdiction or control of the United States. Accordingly, under Section 311(e) of the CWA, 33 U.S.C. § 1321(e), defendant is subject to injunctive relief under Section 311(e) as may be necessary to abate such endangerment.

#### REQUEST FOR RELIEF

WHEREFORE, plaintiff, the United States of America, respectfully requests that this Court:

A. Impose civil penalties on Defendant in an amount up to \$1,000 per barrel of oil discharged, and to the extent that the discharges or violations were the result of gross negligence or wilful misconduct, impose civil penalties of up to \$3,000 per barrel of oil discharged, for those discharges alleged in Paragraphs 20 through 22 of the Complaint; and for those discharges alleged in Paragraphs 23 through 26 of the Complaint, impose civil penalties on Defendant in an amount up to \$1,100 per barrel of oil discharged and, to the extent that the discharges or violations were the result of gross negligence or wilful misconduct, impose civil penalties of up to \$3,300 per barrel of oil discharged.

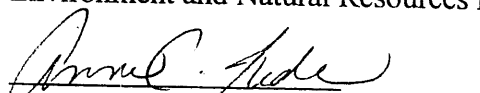
B. Issue an order requiring defendant to comply with the CWA and abate the endangerment, including taking all appropriate action to prevent future discharges of oil into the navigable waters of the United States and the adjoining shorelines, including, but not limited to, the specific measures set forth in the Spill Prevention Plan for Category 1 and 2 Pipeline attached to the Mandatory Disclosures of the United States filed herewith.

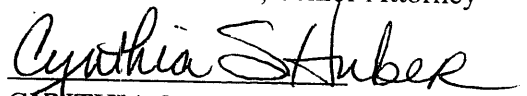
C. Grant such other and further relief as the Court deems just and proper.


Respectfully submitted,

  
LOIS J. SCHIFFER

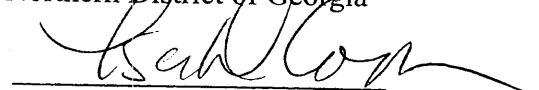
Assistant Attorney General  
Environment and Natural Resources Division

  
ANNA C. THODE, Senior Attorney

  
CYNTHIA S. HUBER, Senior Attorney

  
SCOTT BAUER, Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-1113  
(202) 514-5273  
(202) 514-4133  
Fax: (202) 514-2583.

RICHARD H. DEANE, JR.  
United States Attorney  
Northern District of Georgia



LISA COOPER  
Assistant U.S. Attorney  
Northern District of Georgia  
U.S. Courthouse, Suite 1800  
75 Spring Street, SW  
Atlanta, Georgia 30303  
(404) 581-6249  
GA BAR NO. 186165

OF COUNSEL:  
Gwen Fitz-Henley  
Environmental Accountability Division 4EAD  
U.S. Environmental Protection Agency-Region IV  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-3104